IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2560 OF 2004

Shri Sanjay Shahaji Sonawane,)
Aged 21 years, residing at)
Bhagat Singh Nagar No.2,)
Shinde Lane, Near Meera Jeweller)
Lane, Link Road, Goregaon (West),)
Mumbai.)
(presently detained in Nashik Road)
Central Prison, Nashik.)).. Petitioner

Vs.

1. Shri A.N.Roy,)
Commissioner of Police,)
Brihan Mumbai, Crawford Market,)
Mumbai.)

2. The State of Maharashtra,)
Through Govt.Pleader,)
High Court, Mumbai.)

3. The Superintendent,)
Nashik Road Central Prison,)
Nashik.).. Respondents

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S/Shri U.N.Tripathi with S.M.Shukla for the petitioner.

Shri D.S.Mhaispurkar, APP for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 4th May, 2005.

JUDGMENT : (R.M.S.KHANDEPARKAR, J)

1. The petitioner challenges the order of

detention dated 2nd September, 2004 issued against him under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, hereinafter referred to as "MPDA Act". The detention order was served and executed upon the petitioner-detenu on 3rd September, 2004 by taking the detenu in custody and lodged at Nasik Road Central Prison at Nasik. The order of detention has been passed to prevent the detenu from acting in any manner prejudicial to the maintenance of public order. The said order of detention has been passed based on the C.R.No.450 of 2004 registered on 3rd July, 2004 in relation to the offence punishable under Section 326 read with Section 34 of the Indian Penal Code in respect of the incident stated to have occurred on 2nd July, 2004. The FIR has been lodged at Goregaon Police Station and the 2nd FIR based on the C.R.No.456 of 2004 dated 5th July, 2004 registered at the Goregaon Police Station under Section 394 read with 34 of the Indian Penal Code in relation to the incident dated 5th July, 2004. In both the cases, the petitioner had not been granted bail. In addition to the said FIR, there are two in-camera statements, one was recorded on 27th July, 2004 and another on 28th July, 2004. Consequent to the execution of the detention order, the petitioner made representation

dated 1st October, 2004 which was rejected on 30th October, 2004.

2. The challenge to the impugned detention order is three-fold. Firstly that the order of approval dated 7th September, 2004 has not been issued by the officer duly authorised. Secondly that the order of confirmation dated 21st April, 2004 has not been issued by the person who had considered the report of the Advisory Board, and thirdly that the Government did not consider the representation supported by the large number of people confirming the fact that the petitioner to be a person of clean repute.

3. While assailing the impugned order of detention, the learned Advocate for the petitioner submitted that the communication regarding the order of approval dated 7th September, 2004 issued by the Under Secretary to the Government of Maharashtra, Home Department (Special), who had signed the approval order in the name of the Governor of Maharashtra, is not the competent authority in terms of the provisions comprised under Article 166(1) of the Constitution of India. The State Government was being represented by the head of the executive i.e. Minister in charge i.e. Home Minister, it was he who could have issued

the approval order or if such power was delegated to the Additional Chief Secretary (Home) as per the business rule of the Government then it was the Additional Chief Secretary who could have issued the said order but no other officer from the Home Department unless they were duly authorised to do so under the provisions of law relating to the business rules could have issued such order and that therefore, the approval order dated 7th September, 2004 issued by an officer having no authority in law to issue the same is illegal and contrary to the provisions of law comprised under the MPDA Act, and therefore, the continued detention of the petitioner is illegal. He further submitted that on receipt of the report of the Advisory Board, the State Government has to confirm the detention of the detenu. It is well settled that the officer who considers the report of the Advisory Board, representation of the detenu and other materials, he himself has to issue order of detention and no other officer of the Government unless duly authorised by the business rules made by the Governor can issue such order and on this ground also the continued detention of the detenu from the date of the confirmation is illegal and bad in law. Lastly, it is submitted by the learned Advocate for the petitioner that the representation of the petitioner which was

forwarded to the Government by the detenu in person, a document containing signatures of the large number of people testifying that the petitioner is a good and clean repute, was forwarded to the Government but the same was not at all considered by the respondents. As such, the right of the detenu assured under Article 22(5) of the Constitution of India has been violated and hence the continued detention of the petitioner is to be held as bad in law.

4. The learned APP, on the other hand, submitted that the actual approval order of detention was issued by the Additional Chief Secretary (Home) who was empowered to issue such order under the MPDA Act by virtue of the powers conferred vide Notification dated 5th January, 2004, and therefore, there is no infirmity in the impugned order of approval. As far as the confirmation order is concerned, the same also has been passed by the Additional Chief Secretary (Home), after receipt of the report of the Advisory Board, and therefore, no fault can be found with the impugned order of approval. As regards the representation forwarded by the petitioner, it is the submission on behalf of the respondents that the said representation dated 1st October, 2004 addressed to the Advisory Board was signed by mother and other

neighbours of the detenu was received in the Home Department on 18th October, 2004 along with the report of the Advisory Board, and on the scrutiny thereof on 19th October, 2004 by the under Secretary, it was forwarded to the Deputy Secretary on 20th October, 2004, who considered the same and forwarded it to the Additional Chief Secretary (Home) on 20th October, 2004 itself. The Commissioner of Police, Brihan Mumbai received the parawise comments from the Department on 27th October, 2004, and on scrutiny of the records through the concerned Assistant on 29th October, 2004, it was forwarded to the Under Secretary who endorsed on the same and forwarded to the Deputy Secretary who, in turn, endorsed the same and forwarded to the Additional Chief Secretary (Home) for his consideration on 29th October, 2004 itself. The Additional Chief Secretary (Home), after careful consideration thereof, had rejected the same on 30th October, 2004. The Additional Chief Secretary (Home) was duly empowered to do so under the Rules of Business of Government of Maharashtra. As regards the representation received from the detenu’s Advocate, it was considered independently and without any delay.

5. As regards the first ground of challenge which relates to the order of approval being not issued by

the officer duly authorised, the affidavit-in-reply on behalf of the State Government clearly states that the actual proposal for approval of detention order was issued by the Additional Chief Secretary (Home), who was empowered to pass such order under the provisions of MPDA Act by virtue of the powers conferred by the Notification dated 5th January, 2004. There is no denial of the said affirmation on oath by the Under Secretary, Home Department (Special), Government of Maharashtra. Once it is not disputed that the Additional Chief Secretary (Home) was duly empowered to pass the order of approval under the provisions of the MPDA Act by virtue of the Notification dated 5th January, 2004, and in fact, the said officer has passed such order in relation to the detention of the detenu, the challenge in that regard stands devoid of substance.

6. As regards the second ground of challenge which relates to the order of confirmation having not been issued by the person who had considered the report of the Advisory Board, the affidavit-in-reply on behalf of the State Government clearly discloses that the Additional Chief Secretary (Home) was duly empowered to consider the report of the Advisory Board and to issue the order of confirmation, and in fact,

the Additional Chief Secretary (Home) having considered the report of the Advisory Board has passed the order of confirmation on 21st April, 2004. The statement in that regard having been affirmed on oath and having not been disputed or denied by the petitioner, there is no substance in the challenge regarding the confirmation having not been done by the authority who had considered the report of the Advisory Board.

7. As regards the third ground of challenge which relates to the failure on the part of the Government to consider the representation supported by the large number of people confirming the fact that the petitioner to be a person of clean repute, the affidavit-in-reply on behalf of the State Government discloses a clear statement on oath that the detenu had not forwarded any representation in the person. The representation dated 1st October, 2004 addressed to the Advisory Board was signed by mother of the detenu and some neighbours, and it was received in the office of the Home Department on 18th October, 2004. The same was scrutinised and processed by the concerned Under Secretary on 19th October, 2004. Thereafter, the Deputy Secretary had considered and forwarded the representation, which was considered and

forwarded by the Under Secretary on 20th October, 2004 to him, to the Additional Chief Secretary (Home) on the very same day i.e. 20th October, 2004. The Commissioner of Police, Brihan Mumbai, submitted parawise comments in that regard, which were received in the Home Department on 27th October, 2004. The representation thereafter was scrutinised and processed through the concerned Assistant on 29th October, 2004 and forwarded it to the Under Secretary, who endorsed the same and forwarded it to the Deputy Secretary, who, in turn, forwarded the same to the Additional Chief Secretary (Home) for his consideration on 29th October, 2004. Additional Chief Secretary (Home) considered the same and rejected it on 30th October, 2004 and the same was communicated to the detenu under the letter dated 1st November, 2004. Hence, there is no substance in the third ground of challenge regarding failure on the part of the Government to consider the representation supported by the large number of people confirming the fact that the petitioner to be a person of clean repute.

8. It is pertinent to note that though the ground in relation to the failure on the part of the Government to consider the representation speaks of signatures of the large number of people testifying

the fact that the petitioner to be a person of good and clean repute, the copy of the representation which was submitted to the Government did not disclose any such contents. Besides, there is no statement of fact in the petition to the effect that the representation was signed by the large number of people testifying the fact that the petitioner is a person of good and clean repute.

9. In the facts and circumstances of the case, therefore, we do not find any case having been made out for interference in the impugned order of detention. There is no substance in the challenge to the said order of detention, and hence, the petition fails and is hereby dismissed. Rule is discharged with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(P.V.KAKADE, J)